

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

**Case No. A-6105**

**PETITION OF MAGOMED VELIEV**

(Hearing held February 8, 2006, Worksession held March 22, 2006)

**OPINION OF THE BOARD**

(Effective date of Opinion, April 11, 2006)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.323(a). The petitioner proposes the construction of a new single-family dwelling that requires a variance of 15.50 feet as it is within forty (40) feet of the established front building line. The required established building line is 55.50 feet.

Dick Witmer of Witmer Associates represented the petitioner at the public hearing.

Donald and Adrienne Lees, Helen Edwards, Natalie Foster, and Robert Yack of the Greater Colesville Citizens Association, appeared in opposition to the variance request.

The subject property is Lot 13, Block E, Colesville Manor Subdivision, located at 5 Shannon Court, Silver Spring, Maryland, 20910, in the R-200 Zone (Tax Account No. 00332772).

Decision of the Board: Requested variance granted.

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioner proposes the construction of a new single-family dwelling.
2. The petitioner testified that he currently lives on New Hampshire Avenue and that it is a very noisy street with a lot of traffic. The petitioner testified that the subject property is located on a cul-de-sac, which is very quiet and has little traffic.

3. Mr. Witmer testified that the subject property is an irregularly shaped, undeveloped lot, which was recorded in 1962. The lot is 23,000 square feet. Mr. Witmer testified that the buildable envelope of the subject property must take into consideration a wetlands buffer, a stream valley buffer and also meet an established building line requirement. Mr. Witmer testified that the prior owner of the property received approval for a wetlands buffer intrusion that was granted by the Maryland Department of Environment (MDE) in October of 2004. The encroachment is delineated on Exhibit 4(b) [site plan with approved limit of disturbance] in the record.
4. Mr. Witmer testified that with every wetlands buffer there is a required 25 foot buffer that further protects the wetland area. Mr. Witmer testified that the wetland buffer runs through the middle of the subject property from east to west and that the proposed construction will encroach into the required buffer for the wetland, but will not encroach into the wetlands. See, Exhibit 10(f) [Letter from MD Department of the Environment].
5. Mr. Witmer testified that the established building line requirement for the subject property is 55.50 feet and that the minimum front lot line setback for the R-200 Zone is 40 feet, which the proposed house will be sited. Mr. Witmer testified that the prior owner of the property previously established the footprint of the house and its encroachment into the required wetland buffer. Mr. Witmer testified that the footprint for the proposed house is 1200 square feet. Mr. Witmer testified that one of the aspects involved in a MDE review for with an encroachment into a wetland or a wetland buffer is what is reasonable to accommodate the proposed construction.
6. Mr. Witmer testified that in order to construct any dwelling, needed is room around the perimeter of the proposed structure in which to work and room for general construction purposes. Mr. Witmer testified that in order to reduce or increase the setback from the street that it would require a reduction in the size of the proposed structure and that to move the house eastward toward the wetlands would require that the property owner return to MDE to amend the approved encroachment.
7. Mr. Witmer testified that there is a sanitary sewer line which runs through the back of the subject property and that WSSC has a 20 foot right-of-way over the sewer line, as shown on Exhibits 19 [topographic worksheet] and 20 [same as 4(b) plan with notations]. Mr. Witmer testified that the topography of the subject property is 10 to 16 feet below the elevation of the street and that the driveway for the property will snake around to get down to the level of the house. Mr. Witmer

testified that the wetlands continue off the petitioner's property onto the rear portion of Lot 12.

8. Mr. Witmer testified that the resulting buildable envelope on the subject property is a small triangular area on the western portion of the property, which is approximately 30 feet across the base, parallel to Shannon Court, and which extends 40 feet to the rear building restriction line. Mr. Witmer testified that the resulting shallow buildable area is 650 to 700 square feet, as shown on Exhibit 4(a) [site plan]. Mr. Witmer testified that the proposed dwelling will be sited twelve feet from the western side yard boundary as required by the Zoning Ordinance and that a house could not be built on the subject property and meet the wetland buffer requirement, the stream valley buffer requirement and an established building line requirement.
9. Mr. Witmer testified that three lots were used in the calculation of the established building line, Lots 12, 14 and 15. See, Exhibit 4(d) [established building line exhibit]. Mr. Witmer testified that the siting of the petitioner's house will be consistent with the house on Lot 12 and that other two lots used in the calculation of the established building line are deeper and had more flexibility in the siting of the homes on those lots.
10. In response to a question by Ms. Edwards regarding the environmental impact of the proposed construction, it was noted in the record that the Board has no jurisdiction over the environmental determinations and the wetland buffer and that if the variance were approved, the applicant would be required to obtain any additional permits from the State, the County, and any other governmental agency that has jurisdiction over this property.
11. Mr. Yack testified the citizens' association is in opposition to the variance request because the proposed construction exceeds the established building line and that the house will be closer to the street. Ms. Edwards testified that the proposed construction would be forward the other homes on the circle and that it would not be compatible as it would block the view of neighboring homes. Ms. Lees submitted a letter with her concerns into the record. See, Exhibit 22(a) [letter from Donald and Adrienne Lees].
12. At the March 22, 2006 Worksession, the petitioner submitted revised elevations. The petitioner stated that the proposed stairway, located on for the western side of the house, will be moved to eastern side of the house; and that the proposed balcony, located on the western front of the house, would be moved to eastern front of the house. The petitioner stated the footprint of the dwelling would not expand or

increase with the proposed changes and that the proposed changes do not affect the area for which the variance is required. The revised elevations were entered into the record as Exhibit 24(a)-(d).

### FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The Board finds that while the subject property is a large, irregularly-shaped lot, the application of the County and State regulations result in a very small, severely restricted triangular buildable envelope. The Board finds that the subject property is subject to a wetlands boundary restriction and an additional wetlands buffer requirement, which reduces the available buildable envelope. The Board finds that the subject property's buildable envelope is shallower than those of the other lots located on the cul-de-sac and that the shallowness of the buildable envelope is directly impacted by the required established building line. The Board finds that a structure could not be built on the subject property and meet the wetland buffer requirement, the stream valley buffer requirement and an established building line.

The Board finds that these are exceptional circumstances which are peculiar to the subject property and that the strict application of the zoning regulations would result in practical difficulties to and an undue hardship upon the property owner.

- (b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.

The Board finds that the proposed encroachment into the front lot line setback is the minimum reasonably necessary to overcome the application of the required setbacks.

- (c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.

The Board finds that the proposed construction will continue the residential use of the property and that the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.

The Board finds that variance request will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance of 15.50 feet from the required 55.50 foot established front building line for the construction of a new single-family dwelling is granted subject to the following conditions:

1. The petitioner shall be bound by all of his testimony and exhibits of record, and the testimony of his witness, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4(a) through 4(e) and 24(a) through 24(d).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

Board member Donna L. Barron was necessarily absent and did not participate in this Resolution. On a motion by Angelo M. Caputo, seconded by Caryn L. Hines, with Wendell M. Holloway and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the foregoing Resolution.

Allison Ishihara Fultz  
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 11th day of April, 2006.

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Katherine Freeman  
Executive Director

**NOTE:**

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.